IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F.A.O. No. 51 of 1986
Date of decision: 18-10-2996

Suresh Pal .....Appellant

Versus

State of Haryana and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Shri Sanjiv Kumar, Advocate,
for the appellant.

Shri P.S.Sullar, D.A.G. Haryana.

K.S.GAREWAL,J.

This judgment shall disposed of two connected F.A.Os No. 51 and 52 as they both arise from the same judgment.

F.A.O. No.51 has been filed by Suresh Pal for enhancement of compensation of Rs.20,000/- awarded to him for injuries suffered. F.A.O. No. 52 has been filed by Kamla Devi and others for enhancement of compensation of Rs. 81,800/- awarded to them for the death of Suresh Kumar.

The appeals are against the award dated October 3, 1985 of the learned Motor Accident Claims Tribunal, Karnal. The accident which gave rise to Suresh Pal's claim as well as two other connected claims had taken place on November 23, 1984 at about 2.00 P.M. Kartar Singh was driving motor-cycle HRK 920 from Gharaunda to Panipat with Suresh Pal

and Suresh Kumar sitting on the pillion seat. Kartar Singh was driving the motorcycle at a moderate speed on the left side of the road. When the motor cycle was about 50 yards short of Badauli, bus HRW 4536 of Haryana Roadways, Faridabad came from the opposite side. It was being driven by Om Parkash in a rash and negligent manner, it swerved to the right side of the road and hit the motor cycle. As a result of the accident Kartar Singh died at the spot while Suresh Kumar was brought to the Civil Hospital, Panipat from where he was referred to Delhi Hospital and died on the way to Delhi. Suresh Pal appellant received multiple injuries and became permanently disabled.

The learned Tribunal found in favour of the claimants and came to the conclusion that injuries to Suresh Pal and deaths of Kartar Singh and Suresh Kumar were due to rash and negligent driving of Om Parkash. In respect of Suresh Pal's claim for compensation, the learned Tribunal came to the conclusion that he was entitled to receive Rs.20,000/- as compensation for the injuries received. The legal representatives of Suresh Kumar received Rs.81,800/- as compensation.

F.A.O. No. 51

Learned counsel for the appellant has referred to the claim application and has argued that Suresh Pal was 26 years of age on the date of the accident. He was a farmer who earned Rs.1,000/- per month. Suresh Pal suffered multiple injuries and became permanently disabled. He was treated at Civil Hospital, Panipat, Medical College Hospital, Rohtak and also by Dr. Vijay Gupta, Orthopedic Surgeon, Karnal. According to the

appellant Rs.4000/- was spent on treatment at Panipat where the appellant remained for about one week. Rs. 5000/- were spent on treatment at Medical College Hospital, Rohtak where the appellant remained from November 30 to December 25, 1984. A sum of Rs.4500/- was spent by him at the Nursing Home of Dr. Vijay Gupta from March 9 to April 17, 1985. As a result of the injuries suffered in the accident, the appellant has become permanently incapacitated, is unable to do any manual work. A screw was fixed in his leg but it was not correctly fixed so he had to undergo further treatment.

Reference has been made by the learned counsel to the award of the Tribunal and the evidence recorded before the Tribunal. The appellant had spent about Rs.7000-8000/- on surgery and medicines during his stay at Rohtak. As a matter of fact he had been admitted at Rohtak twice and on both occasions he spent Rs.6000-7000/-. His third spell of treatment was before Dr. Vijay Gupta of Karnal in whose hospital he remained admitted on two occasions, for 40 days and 32 days, and in all Rs.11000/- to Rs.12,000/- was spent at Karnal. The learned Tribunal awarded only 20,000/- by disregarding the actual amount spent. There was no award for loss of future income or for pain and suffering or for permanent disability of 75%.

It is quite clear from the award itself that the learned Tribunal had not at all considered the fact that the appellant had to undergo a long period of treatment at different hospitals/centres. During this time he underwent great pain and suffering. He also suffered loss of future income but these factors were not at all considered. Even permanent disability of

75% suffered by the appellant was ignored.

The award of the learned Tribunal in Suresh Pal's case was certainly defective because three crucial factors had been altogether ignored. Even otherwise the award of Rs.20,000/-, even if it was on the basis of the actual expenses incurred during treatment at Rohtak and Panipat was flawed.

According to the evidence led by the appellant, he was admitted at the Panipat Hospital for a week. He was then taken to Medical College and Hospital, Rohtak where he stayed for nearly 4 weeks. He also remained at City Orthopedics Nursing Home, Karnal for about five weeks. In fact he remained in the Panipat Hospital twice initially for a week and then for sometime after his discharge from Rohtak. On both these occasions he spent Rs. 6000-7000/-. The expenses incurred by the appellant were as under:-

1. At Panipat = Rs. 6000-7000/- on two occasions
   = Rs.12000-14000/-
2. At Rohtak =Rs. 7000-8000/-
3. At Karnal =Rs 11,000-12000/-

   Total =Rs.30,000-33,000/-

The expenses for medical treatment at the three hospitals can safely be taken as Rs.30,000/-. Compensation for permanent disability, for loss of future income and for pain and suffering must be added as these factors were ignored by the learned Tribunal. Permanent disability of 75% had been suffered by the appellant for which he deserves Rs.10,000/-, loss of future income is assessed at Rs.5,000/- and compensation for pain and

suffering is also assessed at Rs.5,000/-.

Consequently under the above three heads compensation of Rs.20,000/- is payable to Suresh Pal. Thus total amount of Rs.50,000/- is the compensation which the appellant was entitled to. Compensation is enhanced from Rs.20,000/- to Rs.50,000/- with 9% interest on the enhanced amount from the date of the application till payment.

FAO No. 52

The appellants are the widow and children of Suresh Kumar deceased. The learned Tribunal awarded Rs.81,800/- as compensation by considering that Suresh Kumar was earning Rs.600/- per month and contributing Rs.400/- to his family. Multiplier of 16 was applied as Suresh Kumar was a young man and he had left behind his widow Kamla Devi (25) alongwith four children ranging from 5 years to 10 months in age.

It has been argued that Suresh Kumar deceased was 29 years of age. He was a partner in a firm of commission agents known as Deep Chand Ramesh Kumar which was carrying out business at Mullanpur, District Ludhiana. He was also working as an accountant earning Rs.3,000/- per month. However, before the Tribunal the claimants had accepted that Suresh Kumar's share in the firm was Rs. 9801/- in the year 1983-84 but his name did not figure in the firm name. He was himself working as muneem with another firm. The witness produced by the claimants could not present any regular accounts or details of income tax and sales tax paid. Learned Tribunal concluded that Suresh Kumar was only working as an accountant (muneem) at different places and had left his

wife and children behind at Mullanpur. The methodology adopted by the learned Tribunal cannot be faulted but in view of the size of the family of the deceased, it cannot be accepted that he was actually spending Rs.200/- out of Rs.600/- on himself. To support his wife and four children the deceased would have been sending at least Rs.450/- and keeping only Rs.150/- out of Rs.600/- for himself. Therefore, monthly dependency of the claimants works out to Rs.450/- and to this multiplier of 18 deserves to be applied as the deceased was only 29 years of age. Thus the compensation payable comes to Rs.97,200/- (Rs.450 X 12X18).

The balance amount shall be payable to the claimants with 9% interest from the date of the application till payment.

The appeals are allowed. In F.A.O. No. 51 compensation is enhanced from Rs.20,000/- to Rs.50,000/- with 9% interest on the enhanced amount from the date of the application till payment. In F.A.O. No. 52 Thus the compensation is enhanced from Rs.81,200/- to Rs.97,200/- with 9% interest on the enhanced amount from the date of application till payment. No costs.

(K.S.GAREWAL)
JUDGE

October 18,2006.
RSK